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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

IMAN HATAMI,

Plaintiff and Appellant,

v.

DENNIS DEL PONTE,

Defendant and Respondent.

H027455

(Santa Clara County

Super. Ct. No. CV008590)

This appeal follows the grant of a special motion to strike plaintiff Iman Hatami's complaint as a strategic lawsuit against public participation (SLAPP suit).

We find the trial court acted properly in granting defendant's motion under the anti-SLAPP statute and affirm.

STATEMENT OF THE FACTS AND CASE

This action arises out of a separate family law matter, in which defendants Dennis Del Ponte, and Law Offices of Dennis Del Ponte (collectively Del Ponte), represented plaintiff Iman Hatami's (Hatami), former wife during the proceedings.

Hatami filed a malicious prosecution action against Del Ponte in connection with the family court matter, alleging general negligence, intentional tort, and fraud arising out of Del Ponte's oral and written statements during the course of advocating for Hatami's wife during the case. The gravamen of Hatami's complaint is that Del Ponte did not

perform his duties as an attorney in the family law proceeding in a reasonable and prudent manner, and in the course of his representation, Del Ponte made false and disparaging remarks about Hatami.

Del Ponte filed a special motion to strike the complaint as a strategic lawsuit against public participation (SLAPP suit), as well as a general and special demurrer. The trial court granted Del Ponte's motion to strike the complaint in its entirety, and deemed the demurrers moot. Hatami filed a timely notice of appeal.¹

DISCUSSION

In this appeal, we consider whether Hatami's action against Del Ponte is a SLAPP suit. Specifically at issue is whether Del Ponte's conduct in connection with his representation of Hatami's ex-wife "implicated First Amendment speech or petition rights and was protected by any one of the four clauses set forth in [Code of Civil Procedure] section 425.16, subdivision (e)" (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1418.), such that Hatami's complaint was properly subject to a motion to strike.

Code of Civil Procedure section 425.16, subdivision (b)(1), provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."²

"On a special motion to strike under the anti-SLAPP statute, '[t]he moving party bears the initial burden of establishing a prima facie showing the plaintiff's cause of

¹ Hatami files this appeal in pro per.

² All statutory references are to the Code of Civil Procedure unless otherwise stated.

action arises from the defendant's free speech or petition activity.' [Citations.] The moving SLAPP defendant may meet this burden by showing the act which forms the basis for the plaintiff's cause of action was an act that falls within one of the four categories of conduct described in subdivision (e) of [Code of Civil Procedure] section 425.16 [¶] 'If the defendant establishes a prima facie case, then the burden shifts to the plaintiff to establish " 'a probability that the plaintiff will prevail on the claim,' " i.e., "make a prima facie showing of facts which would, if proved at trial, support a judgment in plaintiff's favor." [Citation.]' [Citations.]" (*Dowling v. Zimmerman, supra*, 85 Cal.App.4th at p. 1417.)

"The right of access to the courts is an aspect of the First Amendment right to petition the government for redress of grievances. [Citations.]" (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 647-648 (*Wollersheim*)). The constitutional right to petition includes the " 'basic act' " of filing suit. (*Briggs v. Eden Council for Hope and Opportunity*, (1999) 19 Cal.4th 1106, 1115.) By logical extension, the right to petition necessarily includes participation in the litigation as well. (See, e.g., *ibid.* [petition activity includes testifying].) For that reason, a "cause of action 'arising from' defendant's litigation activity may appropriately be the subject of a [Code of Civil Procedure] section 425.16 motion to strike." (*Wollersheim, supra*, 42 Cal.App.4th at p. 648.)

Litigation activity on behalf of a client has been recognized as a sufficient predicate for anti-SLAPP protection. (*Dowling v. Zimmerman, supra*, 85 Cal.App.4th at pp. 1418-1420. Thus, when an attorney assists a client in securing access to the courts, the attorney acts " 'in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue' within the meaning of [Code of Civil Procedure] section 425.16, subdivision (e)(4)." (*Id.* at p. 1420.)

Here, Hatami's claims against Del Ponte flow from his participation in the dissolution proceedings as Hatami's ex-wife's attorney. According to Hatami's complaint, Del Ponte is liable for negligence, intentional tort, and fraud. Each of these claimed actions took place within the context of the family law proceedings, while defendant was acting in his role as counsel for plaintiff's adversary in those proceedings. Del Ponte's participation in the family law proceedings as counsel constitutes conduct in furtherance of his client's constitutional right of petition, as defined in the fourth clause of Code of Civil Procedure section 425.16, subdivision (e). (Code Civ. Proc., § 425.16, subd. (e)(4); see also, e.g., *Dowling v. Zimmerman*, *supra*, 85 Cal.App.4th at p. 1420.)

We find Del Ponte's activity representing Hatami's ex-wife qualifies for anti-SLAPP protection under the first two clauses of Code of Civil Procedure section 425.16, subdivision (e), which safeguard statements made in judicial proceedings as well as statements made in connection with issues under consideration in such proceedings. (Code Civ. Proc., § 425.16, subd. (e)(1) & (2); see *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1047 [describing "free speech and petition conduct" protected under those two clauses].) With respect to those first two clauses of [Code of Civil Procedure] section 425.16, subdivision (e), the crucial point "is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding." (*Braun v. Chronicle Publishing Co.*, *supra*, 52 Cal.App.4th at p. 1047.) Here, the petition activity—legal representation of a party—took place in the context of a judicial proceeding. That petition activity necessarily was accomplished, at least in part, through verbal and written statements. To the extent that those statements form a basis for plaintiff's charging allegations, they qualify for protection under the first two clauses of Code of Civil Procedure section 425.16, subdivision (e).

Because Del Ponte meets his burden of demonstrating that Hatami's action arose from constitutionally protected petition rights within the meaning of the anti-SLAPP,

Hatami must demonstrate a probability of prevailing in his action against Del Ponte.

Hatami's burden is met by a prima facie showing both that he has legally sufficient claims and that the claims are supported by competent, admissible evidence. (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1010; *Wollersheim, supra*, 42 Cal.App.4th at pp. 654-655.) In this case, Hatami's complaint asserts causes of action for negligence, intentional tort, and fraud. The record before us on appeal demonstrates no evidence to support Hatami's claims. Put another way, Hatami submitted no evidence that if credited, would establish a prima facie case that he could sustain a favorable judgment. (See *Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.)

In addition to the lack of evidence to support Hatami's claims, the litigation privilege provides Del Ponte with an absolute affirmative defense. (See Civ. Code, § 47, subd. (b)(1).) That privilege, created by statute, has the effect of "immunizing participants from liability for torts arising from communications made during judicial proceedings, . . ." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 214.) The privilege generally applies "to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) [having] some connection or logical relation to the action. [Citations.]" (*Id.* at p. 212.) The privilege "has been given broad application." (*Id.* at p. 211.) As relevant here, it "has been held to immunize defendants from tort liability based on theories of abuse of process [citations], [and] intentional infliction of emotional distress [citations] . . ." (*Id.* at p. 215.) The defense is available to attorneys, as participants in the litigation process. (*Id.* at p. 219.) More specifically, attorneys sued in their capacity as counsel for a former adversary may assert the privilege. (See *id.* at p. 210.)

Del Ponte is protected by the litigation privilege. His participation in the family law proceedings was accomplished—at least in part—through communicative acts, which are protected by the privilege. (See, e.g., *Kimmel v. Goland* (1990) 51 Cal.3d 202, 205

[the litigation privilege protects statements made in judicial proceedings but not conduct]; see also, e.g., *Silberg v. Anderson, supra*, 50 Cal.3d at pp. 217-218.)

In sum, Hatami failed to carry his burden of demonstrating a probability of prevailing as required under the anti-SLAPP statute. First, Hatami failed to offer admissible evidence to support the legal sufficiency of his claims against Del Ponte. Additionally, Del Ponte's statements as a participant in the family law proceedings are protected by the litigation privilege. Therefore, we find the trial court was correct when it granted Del Ponte's special motion to strike Hatami's complaint as a SLAPP suit.

DISPOSITION

The judgment of the trial court is affirmed. Del Ponte is awarded reasonable attorney fees and costs. (Code Civ. Proc., § 425.16, subd. (c).)

RUSHING, P.J.

WE CONCUR:

ELIA, J.

MIHARA, J.